

# EXHIBIT D

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September 21, 2005

VIA HAND DELIVERY

Timothy Hogan, Esq.  
Lynch, Ichida, Thompson, Kim & Hirota  
1132 Bishop Street  
Suite 1405  
Honolulu, Hawaii 96813

Re: Wayne Berry vs. Hawaiian Express, et al.

Dear Mr. Hogan:

Enclosed you will find a DVD containing more than 20,000 files from the "after" images taken by Guidance Software which you claim contain your client's intellectual property. I have removed the files that I could find containing attorney client communications.

Also enclosed is a 160 GB external disk drive containing several hundred thousand files from the "before" images you claimed have relevance to your client's intellectual property. Again, I have removed the files that I can find containing attorney client communications.

The following are a handful of the files you claim have relevance to your client's intellectual property:

**Clanlist.doc.** Names addresses and telephone numbers for Mark Dillon's relatives.

**Fleming Associates Christmas Luau.doc.** Files discussing arrangements for an employees' luau.

**catalogue[1].htm.** A file containing a catalogue of pillows manufactured by Organic Buckwheat Pillow Products of Canada.

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**mpix5700[1].htm.** A file describing various maps of Europe including 100 Hikes In The Alps - Edition #2 and 1998 Eurail And Train Travel Guide To Europe

**croatian visa application.doc.** Mr. Dillon's wife's application to the Croatian government for a visa

**Cardio Vascular Nutrition.doc.** A file containing advice on health food supplements for cardio vascular care.

**Chef Mavro Menu.html.** The menu from a local Honolulu restaurant.

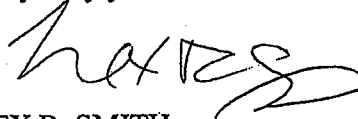
**brucealmighty50a[1].jpg.** Two files containing photos of Jim Carey from the movie Bruce Almighty.

**Kelly's AP Average Weight Gain for Breastfed Babies.html.** Information on the benefits of breastfeeding.

This list could go for pages as your production contains literally thousands of files that are equally not reasonably calculated to lead to the discovery of admissible evidence.

It is consistent with the positions you have taken throughout this case that you are attempting to extend Mr. Berry's claims to cover Chef Mavro's menu, Jim Carey's photo and factual information on breastfeeding. As a result of your overbroad, bad faith request, we have invested a tremendous amount of time attempting to weed out attorney-client communications. We shall seek to recover attorneys' fees and costs at the appropriate time.

Very truly yours,



LEX R. SMITH

for

KOBAYASHI, SUGITA & GODA